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In The
Supreme Court of the United States
October Term, 1988

FRANCES B. MORRIS,
Petitioner,
V.
THE FIRST NATIONAL BANK OF MORGANTOWN, N.A.
and
FIRST FEDERAL SAVINGS AND LOAN OF GREENE COUNTY, PENNSYLVANIA,
Respondents.

FROM THE WEST VIRGINA SUPREME COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

PATRICIA A. BUNNER
Attorney at Law
Route 2, Box 341
Fairview, West Virginia 26570
(304) 296-3000

51 pp

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QUESTION PRESENTED FOR REVIEW

Whether the Circuit Court of Monongalia County, West Virginia, erred in allowing a vague, ambiguous and rambling letter from an obviously aggrieved but most uniformed lay person to be considered a sufficient complaint to form a basis for a pro se lawsuit, and in allowing that person to destroy her cause in action; in treating defendants' motions to dismiss as motions for summary judgment without evidence, witnesses, discovery, or a record; and in granting summary

judgment in favor of the defendants even though there were unresolved factual issues of a substantial nature, cutting off further actions, thereby denying the Petitioner substantive and procedural due process of law in violation of her privileges protected under the Fourteenth Amendment to the United States Constitution, and further denying her equal protection of the laws.

TABLE OF CONTENTS

Opinion Below 1

Jurisdiction..... 1

Constitutional Provisions..... 1

Statement of Case 2

Argument 7

Appendix 23

Appendix I..... 24

Appendix II 25

Appendix III..... 34

Appendix IV 36

Appendix V..... 42

Appendix VI 44

TABLE OF AUTHORITIES

Barker v. Norman, 651 F.2d 1107 13

Blair v. Maynard, 324 S.E.2d 31 12

Cafeteria Worker v. McElroy, 367 U.S. 886 15

Canadian National Railway Co. v. Eggen, 252 U.S. 553 18

Chamberlaine & Flowers v. Smith Contracting, 341 S.E.2d 414 18

Dartmouth College v. Woodward, 4 Wheat (U.S.) 518 19

Davis v. Zahradnick, 600 F.2d 458 14

Esposito v. Klinger, 381 F.2d 13 18

Evitts v. Lucey, 469 U.S. 387 17

Garaux v. Pulley, 739 F.2d 437 13

Haines v. Kerner, 404 U.S. 519 15,17

Ham v. Smith, 653 F.2d 628 13

Heavner v. Elkins, 69 W.Va. 255 19

Hudson v. Hardy, 412 F.2d 1091 13,14

Jacobsen v. Filler, 790 F.2d 1362 14

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 15

Lewis v. Faulkner, 689 F.2d 100 14

Little v. Streater, 452 U.S. 1 15

Logan v. Zimmerman Brush Co., 455 U.S. 422 15

Mitchell v. Inman, 682 F.2d 886 13

Moore v. State of Florida, 703 F.2d 516 13

Morrissey v. Brewer, 408 U.S. 471 15

Roberts v. New York, 295 U.S. 79 13,20

Ross v. Franzen, 777 F.2d 1216 14

Roseboro v. Garrison, 528 F.2d 309 13

Tinsely v. Anderson, 171 U.S. 101 18

Wolff v. McDonnell, 418 U.S. 539 15

Opinion Below

The opinion of the West Virginia Supreme Court of Appeals was rendered March 8, 1989, and is not of record but is listed as Appendix I.

Jurisdiction

The judgment of the State court was entered March 8, 1989. This petition for writ of certiorari was presented for filing June 5, 1989. The jurisdiction of this court is invoked under 28 U.S.C. 1257(a).

Constitutional Provisions

Amendment XIV (1868)

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment VII (1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law.

Statement of Case

Frances Morris, the Petitioner, is owner of a forty-five percent interest in a company known as Morris Enterprises, Inc. Her husband Andrew Morris is the owner of the remaining interest. The Morris family also own, control or do business in other names, primarily Morris Home Centers. They have several bank accounts, certificates and repurchase agreements.

All Frances B. Morris has ever wanted to know was 1) where her money was, and 2) why the bank statements did not reconcile with what she believed she had. It all started at First Federal Savings and Loan Association of Greene County, Waynesburg, Pennsylvania, back in 1978, when Mr. Morgan asked Mrs. Morris, "Don't you ever get tired of counting this money, Mrs. Morris?" Mrs. Morris indeed counted her money, and by her records and recollection, the First Federal Savings and Loan Association and First National Bank of Morgantown, West Virginia, failed to properly account, and, indeed, in some instances, misappropriated in excess of one hundred thousand dollars ($100,000.00) of her hard earned money. Mrs. Morris discovered forged certificates of deposit and forged withdrawal tickets at the Waynesburg savings and loan. In 1981 the same institution erroneously transferred to the First National Bank of Morgantown, West Virginia, a large amount of her money.

Mrs. Morris went to her family attorney, who sent her to the appropriate federal agencies; but unfortunately for Mrs.

Morris, the Governor of West Virginia appointed her family attorney to a vacant judgeship, and Mrs. Morris on her own was unable to secure the assistance from the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, the Federal Reserve, the Comptroller of the Currency or the Federal Deposit Insurance Corporation. She followed the federal agency advice to go to the responsible financial institution and fill out the affidavit of missing funds. However, neither the savings and loan nor the bank provided Mrs. Morris with the federally mandated forms. Mrs. Morris's family attorney sent her to the State Republican party chairman, a partner in a firm specializing in commercial law, who was unable to giver her case the attention she felt it warranted.

After a long period of time, no action had been take on her part, and in frustration, she filed an ethics complaint and her counsel then responded with two lengthy letters in one day. From her winter home in Florida she retained attorney Sigman who took $10,000.00 and wrote an extensive legal memorandum outlining her cause of action. However, he never filed an action in federal court or in the West Virginia courts. She then contacted four other attorneys - all of whom took her money - but none of them ever filed an action on her behalf.

Out of frustration and knowing that her statute of limitations was expiring, she went to the Circuit Court, and orally asked the Clerk for the forms to file a lawsuit. She was told to put it in writing and that she attempted to do. They took

her money and received her letter and told her, "Nothing will ever come of it."

So, Mrs. Morris went to Court. She knew she had rights as an American citizen, even though she only had an eighth grade education. She knew the banks had converted her hard earned money. She knew she had a right to a jury trial, and she was confident that when a jury heard what the banks had done to her that she would win.

Mrs. Morris knew nothing about civil procedures, and she appeared in Court when she was told to appear. She appeared various times, but neither the Circuit Judge nor opposing counsel saw fit to secure the services of the Circuit's Court Reporter nor advise Mrs. Morris that she could do the same. Therefore, all we have are collective memories of Mrs. Morris, her daughter, her daughter in law and opposing counsel, as well as the judge who ruled against her.

It was obvious that Mrs. Morris and the banks had substantial disagreement over factual issues. However, the banks did not make any responsive pleadings except for West Virginia Rules of Civil Procedure Rule 12 Motion to Dismiss for Failure to State a Claim for which Relief could be Granted. Eventually, counsel for the out-of-state savings and loan submitted into evidence a cash flow chart, which Mrs. Morris maintained was actually prepared by her first counsel, and which was not dispositive of her primary contention of missing funds, but did document certain transfers, which

she maintained were made without legal authorization in violation of the state and federal law.

The Circuit Court avoided dealing with her primary contention which included the forgery of authorizations and federally insured certificates, the unauthorized transfers and the failure to pay interest on funds so transferred, the latter two of which were clear violations of federal regulations and statutes. It should be noted to the Court that the savings and loan is federally chartered and insured, and the bank is nationally chartered and insured. However, Mrs. Morris had no notice of any pertinent regulations, and only knew that they could not do what they did to her and her money. But, they did do to her what they did, and have apparently gotten away with it.

During the pendency of her action Mrs. Morris sought in vain to obtain legal counsel. Most attorneys in the community, who had any familiarity with such a cause of action, worked for financial institutions. Mrs. Morris talked with numerous attorney in a sixty-mile radius of her home in Morgantown, West Virginia, and talked to lawyers in Florida and Washington, D.C. No one was willing to take her case. Those who had the expertise did not have the time, and those who had the time did not have the necessary background. Other lawyers took her money, reviewed her case, and then cut her adrift due to the complexity of the various financial transfers.

On May 27, 1988, the Circuit Court ruled in favor of various banks in several cases involving bank litigation. One of the decisions was the Summary Judgment against Mrs. Morris, despite the fact that no motion for summary judgment was ever made by defendants. Mrs. Morris suddenly came to the realization that she was not going to get her jury trial and found her only recourse was to appeal from the sparse circuit court record.

Mrs. Morris retained counsel after meeting in the Court House another plaintiff against another bank who had just successfully settled his case. She retained out-of-town counsel Kenneth P. Simons and Patricia Bunner for the sole purpose of tendering an appeal. The appeal to the West Virginia Supreme Court of Appeals was based on the issues that seemed to have been presented at the lower court, discussion with opposing counsel as to what happened in the Court room, and (particularly) her perfunctory dismissal based on the court's rendering summary judgment. The Circuit Court of Monongalia County also granted a post trial hearing on Mrs. Morris' West Virginia Rules of Civil Procedure Rule 60 motion to vacate the summary judgment; the hearing is scheduled for June 21, 1989.

The Petition for Writ of Error and Appeal was submitted to the West Virginia Supreme Court in January, 1989, and denied March 7, 1989. In the Petition for Writ of Error seven issues were raised before the appellate court, including the issue involving the federal question pertaining to the denial of due process and access to the courts. This issue was raised

in particularity and also pervaded much of the argument involving the various State issues raised therein. The West Virginia Supreme Court of Appeals in declining to take the case simply did not address the federal question raised before them. The failure of the West Virginia Supreme Court of Appeals to remand the case for the obvious denial of Mrs. Morris' rights to a jury trial on the disputed factual issues, and for the denial of her privileges to have equal and meaningful access to the courts, amounted to a denial of a fundamental right to a jury trial and the denial of her procedural and substantive due process under the Seventh and Fourteenth Amendments to the United States Constitution. This refusal on the part of the West Virginia Supreme Court of Appeals brings this action to the United States Supreme Court petitioning for a Writ of Certiorari to issue.

ARGUMENT

Whether the Circuit Court of Monongalia County, West Virginia, erred in allowing a vague, ambiguous and rambling letter from an obviously aggrieved but most uniformed lay person to be considered a sufficient complaint to form a basis for a pro se lawsuit, and in allowing that person to destroy her cause in action; in treating defendants' motions to dismiss as motions for summary judgment without evidence, witnesses, discovery, or a record; and in granting summary judgment in favor of the defendants even though there were unresolved factual issues of a substantial nature, cutting off further actions, thereby denying the Petitioner substantive and procedural due process of law in violation of her privileges protected under the Fourteenth Amend-

ment to the United States Constitution, and further denying her equal protection of the laws.

This was an action whose primary purposes were to obtain an accounting of all funds and to secure the replacement of any funds together with interest that may have been misplaced, mishandled or obtained wrongfully by forgery by persons unknown, while said funds were deposited with two financial institutions.

Petitioner is uneducated, unsophisticated and aggrieved by her own ignorance. Petitioner most improvidently was allowed to commence a most complex lawsuit, *pro se*, on the basis of a letter of general complaint "requesting to file a lawsuit," when she knew nothing of the proper legal procedure. The case cries for an amended complaint such as any competent lawyer would have filed. The complexity of the matter would cause any competent and conscientious lawyer to engage in the sending of interrogatories, possibly the adding of others as party defendants, the taking of depositions, motions for production of various financial documents and other discovery pertaining to the many factual issues, which, if addressed by the Court at all, were taken solely as stated by the corporate bank defendants through their officers and lawyers.

The Petitioner Frances Morris, after employing at least six attorneys in West Virginia and Florida to help her unravel the mysterious and myriad transactions of the two defendant banking corporations, found herself without counsel and un-

able to retain any representation to deal with what was rather complex litigation against the largest bank in her home community. Out of frustration she wrote the letter to the Circuit Clerk of Monongalia County, West Virginia, dated February 9, 1987, that became the "complaint", the prejudicial dismissal of which became the basis of her subsequent appeal to the West Virginia Supreme Court of Appeals and of this Petition. (See Appendix III.)

The letter to the Circuit Clerk expressed the complaint's desire to start a lawsuit against the two banking corporations to resolve her questions pertaining to transactions between and within the institutions involving hundreds of thousands of dollars of the complainant's, her husband's and their business' funds. The letter by itself clearly fails to state a claim upon which relief could be granted. This letter was evidently served on the defendant institutions, which responded by properly moving for a more definite statement. Without any idea as to what might be a proper pleading in the matter, the complainant responded with another letter submitted to the Court, April 14, 1987, that was a vague, rambling, ambiguous response. The gist of this letter was a diatribe against her former legal counsel, who had charged her large fees, but who had failed to find her any answers to her question. The letter referred to two other cases, one a criminal case, and was clearly irrelevant to the matter at hand.

No answer as such was ever filed in the matter, and it remains debatable whether there ever really was a valid com-

plaint. An order was entered April 20, 1987, requiring the filing of a more definite statement. No additional statement was filed by the complainant. The complainant, whose daughter-in-law is an accountant, patiently waited for what she believed would be a trial by jury, which would give her an opportunity to explain her position. The Court asked the financial institution defendants to provide records of the various transaction involving Morris money. Several weeks later flow charts were made available to the Court by the defendants, which the plaintiff maintained were indicative of forged transaction authorizations, incomplete as to her holdings, and furthermore failed to account for interest that should have accrued.

After a series of hearings or conferences, not one of which was ever recorded or transcribed, the Court treated the original motions to dismiss as motions for summary judgment, and entered summary judgment against the plaintiff with prejudice and for the defendant banking institutions. In so doing the Court evidently made the factual determination that there were no forged documents, unauthorized transfers, unaccounted principal nor interest. Up until the entry of this final prejudicial order, the plaintiff believed that she would have the opportunity to explain her position to a jury. She was denied any opportunity to a proper accounting of her funds, and to this day has been prevented by the defendants and the Circuit Court of Monongalia County, West Virginia, from ever obtaining an accounting.

At no time during the procedure was the plaintiff encouraged either on or off the record to retain legal counsel. (See Appendix IV.) Mrs. Morris' regular legal counsel had been elevated to the bench by appointment of the Governor in late 1985, and his recommended lawyer had been the one she criticized in her second letter to the Court. The plaintiff had largely despaired of ever finding counsel to represent her in the area, since rumors were circulated among members of the local bar that Mrs. Morris was incompetent and a deadbeat.

To have properly pursued the litigation against the financial institutions, Petitioner needed the assistance of legal counsel knowledgeable about various negotiable instruments, a certified documents examiner and an accountant. She was allowed to proceed without counsel, never employed a documents examiner, and her daughter-in-law was specifically not permitted to testify, despite her experience as an accountant.

Petitioner was left with all her questions unanswered as to why her funds were transferred by the federally chartered savings and loan in Pennsylvania to First National Bank in Morgantown, West Virginia. The extremely low yields of funds invested in bank repurchase agreements were not explained. The appearance of what appeared to be her and her husband's signatures on documents she had never seen before was also not explained, nor was she ever been able to have some competently examined. The Order of the Circuit Court granting summary judgment for the defendants con-

cluded simply that there was no issue of a material fact to be decided by a jury.

The Order of the Circuit Court plainly denied the plaintiff procedural due process in disposing of her claims against the defendant institutions. Petitioner maintains that she was denied certain federally originated rights and that she was not granted a fair hearing of her assertions against the depository institutions based on the usual course of judicial procedure followed in the State of West Virginia.

There is no question in West Virginia as to any natural person's right to appear *pro se* in civil cases. West Virginia Constitution, Article III, Section 17, provides in pertinent part: "The Courts of this State shall be open, and every person, for any injury done to him, in his person, property or reputation, shall have remedy by due process of law... ." In *Blair v. Maynard*, 324 S. E. 2d 31 (W.V. 1984), which established guidelines for a litigant representing himself or herself, the Supreme Court of Appeals stated: "The fundamental tenet that the rules of procedure should work to do substantial justice, however, commands that judges painstakingly strive to insure that no person's cause or defense is defeated solely by reason of their unfamiliarity with procedural or evidentiary rules."

In the *Blair* case the record indicated that the Court had repeatedly stressed the importance of the litigant being represented by counsel; in the instant case the "record" contains absolutely no warnings, nor even suggestion being given or

made concerning the need for counsel to be retained. In this complicated litigation the plaintiff lacked the knowledge, education and background to act for herself. Mrs. Morris did not knowingly and intelligently elect to represent herself. She had repeatedly attempted to retain counsel, and had been unsuccessful in retaining anyone to engage the institutions in litigation.

Mrs. Morris was not warned about what was about to befall her; she was afforded no explanation of procedural rules. In several federal cases the courts have ruled that *pro se* litigants must receive notice of a summary judgment motion under Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. *Hudson v. Hardy*, 412 F.2d 1091 (D.C. Cir. 1968); *Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984); *Moore v. State of Florida*, 703 F.2d 516, 520-521 (11th Cir. 1983); *Ham v. Smith,* 653 F.2d 628, 630 (D.C. Cir. 1981); *Barker v. Norman,* 651 F.2d 1107, 1128-30 (5th Cir. 1981); *Roseboro v. Garrison,* 528 F.2d 309, 310 (4th Cir. 1975); *Mitchell v. Inman,* 682 F.2d 886, 887 (11th Cir. 1982.) She was not provided advisory or standby counsel to explain procedures to her by the Court. The Court well knew that Mrs. Morris had the financial resources to pay for a lawyer, but that she could not find one willing to undertake her case.

Mrs. Morris received no notification concerning her obligation to file a reply affidavit once summary judgment was being considered by the Court. Absent a written summary judgment motion, it is unlikely that even an experienced litigant or one represented by counsel could avoid

being blind-sided by the summary judgment motion that did not actually exist. In this case the Petitioner clearly was unaware of her obligation to file a reply affidavit, and consequently none was filed. *Jacobsen v. Filler,* 790 F.2d 1362 (19th Cir. 1986); *Ross v. Franzen,* 777 F.2d 1216, 1219 (7th Cir. 1985).

In *Hudson v. Hardy,* cited herein, a pro se prisoner filed a "petition of writ of declaratory judgment," thereby alleging cruel treatment in the jail. The federal district court granted the defendant's motion to dismiss the complaint, or in the alternative, for summary judgment without informing the plaintiff of the nature of the summary judgment. This judgment was reversed on appeal where the District of Columbia Circuit held that a pro se litigant against whom a summary judgment motion is made must be given notice of the requirement to respond to the motion in order that he can avoid an automatic judgment against him. *Hudson v. Hardy,* at 1092-94, This notice must be, the Court wrote, "understandable to one in appellant's (a *pro se* litigant's) circumstances fairly to apprise him of what is required." It must inform of his obligation to respond as well as to the consequences of failure to respond. See also *Davis v. Zahradnick,* 600 F.2d 458, 460 (4th Cir. 1979). In *Lewis v. Faulkner,* 689 F.2d 100, 102 (7th Cir. 1982), the Court justified the guarantee of notice by the observation that summary judgment is "contrary to lay intuition." Most pro se litigants, just like Frances Morris, assume that all lawsuits smoothly process from complaint to trial. *Jacobsen v. Filler,* 790 F.2d 1362, 1368 (9th Cir. 1986) (Reinhardt dissenting). This is not to suggest

that "every civil litigant [is entitled] to a hearing on the merits in every case," *Logan v. Zimmerman Brush Co.*, 455 U.S. 545, 552 (1965). See also, *Little v. Streater*, 452 U.S. 1, 5-6 (1981). Rather it has been declared that "the very nature of due process negates any concept of inflexible procedures universally in any situation." *Wolff v. McDonnell*, 418 U.S. 539 (1974), quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). This results in due process being conceived as flexible and calling for procedural protection as the particular circumstance demands. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 162 (1951); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The result has been a balancing test between governmental interests and private interests with determinations made on a case by case basis. Some litigants would require little protection from the Court and some would require a great deal, depending on their individual circumstances. The litigant having the background of the Petitioner would certainly seem to be entitled to a greater amount of due process protection that a better educated, better informed person. At a very minimum the litigant should be entitled to a liberal construction of pleadings in order to stay in court, which in turn should prompt efforts to determine the procedural safeguards necessary to further the litigation. *Haines v. Kerner*, 404 U.S. 519 (1972).

Mrs. Morris complained initially about the transfer of ninety thousand dollars from one institution to the other that was made without any authorization be her. The Court con-

sidered whether or not Pennsylvania law permitted the transfer of these funds without the authorization of the plaintiff as a tenant by the entireties. Ignored was the allegedly forged signature of Mrs. Morris and labyrinthine maze of paper transactions, all made without her authorization and transferred into accounts over which she had no control.

Summary judgment is only called for when the moving party is clearly entitled to judgment as a matter of law, and when no genuine issue exists for trial. In this case defendants did not respond to the plaintiff's allegations of wrongdoing. They also clearly did not deny them. They sought dismissal for failure to state a claim upon which relief can be granted, which the Court transformed into a motion of summary judgment, after it engaged in a perfunctory examination of some flow charts. These charts purportedly show that no money belonging to Mrs. Morris was actually lost or embezzled. They do indicate interest earnings of less than one percent annually for some instruments, which in and of itself is ludicrous. Rule 56 of West Virginia Rules of Civil Procedure provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavit, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

This case is remarkably bereft of any pleadings. There was no discovery beyond the disputed flow charts being produced. Conspicuously no accounting was authorized by the Court; in fact the Court refused to permit an accounting.

By not giving her the opportunity to be heard, the Court denied Mrs. Morris access to the Courts in the violation of West Virginia Constitution, Article III, Section 17, which grants open access: "The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay." Given the clear factual dispute, Petitioner not only declares that the Circuit Court denied her right of access, but, by usurping the role to decided all factual matter in favor of the defendant banks without even hearing the Petitioner's witnesses, the Circuit Court violated her rights under Amendment VII of the Unites States Constitution, which preserves her right to a jury trial.

There may be circumstances when the law does not require that a party be actually granted access to the courts. Once, however, such access is granted, the procedures utilized must provide due process. See *Evitts v. Lucey,* 469 U.S. 387, 393 (1985). That is the very situation found in *Haines v. Kerner,* cf., above, where a meritorious claim was dismissed because the *pro se* had not invoked the so-called "magic words" in the pleadings, and was subjected to a motion to dismiss. That is very close to what happened in the instant case, except the effect may have been graver, inasmuch as the Court granted a summary judgment.

The Court cut off any other possible causes of action that Mrs. Morris might have had against individuals responsible for maneuvering her funds. She was thus prevented from

having a proper complaint filed once she obtained counsel. The Court should have considered the possibility of the other causes of action she had in this matter, including those federal violations committed by the defendant bank and savings and loan. In fact the Order concentrated on the one large transfer from the savings and loan to the bank that was specifically mentioned in Mrs. Morris' alleged "complaint". The Court should not have limited itself to the issues set forth in the pleadings, but should have inquired and considered other possible causes of action to see whether there were any grounds for an amended complaint, as though the initial complaint were already amended to conform to the Rules. *Chamberlaine & Flowers v. Smith Contracting,* 341 S. E. 2d 414 (W.V. 1986). Rule 56 (c), West Virginia Rules of Civil Procedure. The fact that a proper pleading would probably have been able to outline a cause of action against the defendant institutions should necessitate the vacation of the order dismissing the Petitioner's claim to permit the filing of an amended complaint. *Esposito v. Klinger,* 381 F.2d 13 (C.A. Cal. 1967).

Once Mrs. Morris' letter was elevated to the status of being a complaint, she had the right to be treated like any other citizen. *Tinsely v. Anderson,* 171 U.S. 101, 18 S. Ct. 805. It is essential that a person, in order to receive due process, possess the unhampered right to assert in the Courts his rights without discrimination, by the same process against those who wrong him as is open in every other person. The Courts are open to all on the same terms. *Canadian National Railway Co. v. Eggen,* 252 U. S. 552, 40 S. Ct. 402. This

means that if someone is wronged or their property taken from them without due process, they are entitled to seek redress. To deny an aggrieved person these rights may fundamentally deprive that person of his or her contract or property rights, privileges afforded protection under Article IV, Section 2, Constitution of the United States. *Dartmouth College v. Woodward,* 4 Wheat (U.S.) 518 (1819). These fundamental privileges are protected when the action depriving a person of due process is initiated by a State under the Fourteenth Amendment. *Heavner v. Elkins,* 69 W.Va. 255, 71 S.E. 2d 184, aff'd 231 U.S. 743, 34 S. Ct. 318.

The functions of the jury and the court of West Virginia are the same as they are in the federal courts. Petitioner contends that the circumstances in the Circuit Court below were such that they cumulatively violated her fundamental privileges concerning her right to contract, her right to deposit her money safely and according to standards set by law for federally regulated institutions, and fundamental right to meaningfully have access to the courts. What transpired in the instant case was not the protection of Mrs. Morris' procedural due process. There was no full hearing conducted on the merits of her claim, no opportunity for such a hearing, inadequate discovery, and no record to reflect just what the Court did in order to determine that no issue of material fact was present for a jury to decide. Given the assertions by Mrs. Morris as to forgery of documents and unauthorized transfers, together with the apparent loss of interest and perhaps principal, what transpired did not amount to legitimate judicial discretion on the part of the Circuit

Court of Monongalia County, West Virginia. While there is no denying that in a situation where legitimate judicial discretion has been exercised, due process requirements are met, it is not so clear that where such discretion has been abused by invading the province reserved to the jury that due process has not been met. However, in the instant case the number of questionable acts and decisions by the Court have cumulatively served to deprive the Petitioner of both her substantive and procedural due process. The actions of the institutions compounded by the courts have been tantamount to a taking of Mrs. Morris' property without affording her the opportunity to determine her losses, let alone her just compensation.

In this case no law was actually constructed by the Court, except for its determination of the Pennsylvania statute pertaining to tenancy by the entireties. This statute had little bearing on whether Petitioner had a cause of action against the savings and loan, and had no bearing on whether she had a cause against the bank. The order asserts that there were no significant factual issues of a material nature involved in the case. Such a determination is usually made by examining the pleadings and the discovery that has been conducted. In this case there were no pleadings to speak of and very limited discovery. The Court's determination that this matter could be dismissed with prejudice on a motion for summary judgment, which also did not exist, verges on being downright arbitrary and capricious. The error is glaring and obvious and is a violation of Petitioner's due process right. *Roberts v. New York,* 295 U.S. 79, 55 S. Ct. 689.

In order for due process to be met, a hearing is required. Such a hearing must be fair and adequate, an orderly proceeding in which one may adequately protect one's rights. In the instant case there was no fair and adequate hearing, and no opportunity for Petitioner to introduce evidence or make argument. In fact Petitioner was still waiting for her opportunity for a jury trial, and had been denied the opportunity to have her accountant daughter-in- law testify prior to the entry of the summary judgment order.

In summary, the alleged complaint was insufficient to form a basis for a *pro se* lawsuit and the more specific statement was, in fact, even more vague, rambling and ambiguous. The Petitioner was allowed to proceed in the case without counsel and without being advised as to the need to employ counsel until her cause of action was destroyed by a decision barring her potential claims against the defendants. The defendants' motions to dismiss for failure to state a claim were improperly transformed into a motion for summary judgment with no answer, sparse discovery, and no recorded testimony ever having take place. The proceeding was not transcribed, and the Petitioner was not advised that it could be transcribed; this was done to effectively avoid the creation of a proper record, which is necessary for appellate review. The summary judgment was rendered with a large number of material issues being unresolved or resolved in favor of the defendant financial institutions.

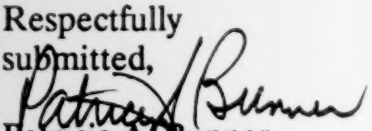
The causes of action the Petitioner legitimately possessed are jeopardized by the *res judicata* effect of the proceeding

in the Circuit Court of the Monongalia County. The Petitioner still has not been able to even compel an accounting by the defendant institutions, even though most of the money in question is still on deposit with the First National Bank of Morgantown, N.A..

All of these improprieties form the basis for Petitioner's assertion that she has been deprived of her federally protected rights under the Constitution of the United States.

Petitioner, therefore, prays that a Writ of Certiorari be awarded to the West Virginia Supreme Court of Appeals to remand this matter for a proper hearing to preserve the Petitioner's due process rights as the Court deems appropriate.

Respectfully submitted,



Patricia A. Bunner
Attorney at Law
Fairview, West Virginia

June, 1989

APPENDIX

I. Opinion of the West Virginia Supreme Court of Appeals

II. Opinion of the Circuit Court of Monongalia County

III. Complaint

IV. Complainant/Petitioner's Affidavit

V. Complainant/Petitioner's Response to Motion for More Definite Statement

VI. Official Court Reporter's Letters as to No Record

APPENDIX I

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 8th day of March, 1989, the following order was made and entered:

Frances B. Morris, Plaintiff Below, Petitioner

87-C-98

vs.

The First National Bank of Morgantown, N.A., and First Federal Savings and Loan Association of Greene County, Waynesburg, Pa., Defendants Below, Respondents

On a former day, to-wit, January 30, 1989, came the Petitioner, Frances B. Morris, by Patricia A. Bunner and Kenneth P. Simons, her attorneys, and presented to the Court her petition with exhibits praying for an appeal from a judgment of the Circuit Court of Monongalia County, rendered on the 27th day of May, 1988, with the record therein accompanying the petition.

Thereafter, on the 1st day of March, 1989, came respondent First National Bank of Morgantown, N.A., by Oliver & Yackel, and Daniel A. Oliver, its attorneys, and presented to the Court its response in opposition thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse the appeal prayed for.

A True Copy

ATTEST: Jean Friend (SEAL)
ATTEST Jean Friend (SEAL) CLERK
MONOGALIA COUNTY CIRCUIT COURT

APPENDIX II

IN THE CIRCUIT COURT OF MONOGALIA COUNTY, WEST VIRGINIA

COURT ROOM I

FRANCES B. MORRIS
Plaintiff,

CIVIL ACTION NO. 87-C-98

VS

THE FIRST NATIONAL BANK OF MORGANTOWN, N.A., and FIRST FEDERAL SAVINGS & LOAN OF GREENE COUNTY, PENNSYLVANIA,
Defendants.

MEMORANDUM/ORDER

The Plaintiff brought suit against the defendants by Complaint in the form of a letter filed in the Monongalia County Clerk's office on February 10, 1987, alleging a conspiracy among the defendants to defraud the plaintiff of certain funds theretofore deposited in various accounts with the defendants. On March 5, 1987, each defendant filed with the Circuit Clerk's Office, a Motion for a More Definite Statement. On April 13, 1987, the Court heard the argument with respect to the defendant's Motions and plaintiff was ordered to provide more definite statement to the defendants. On April 15, 1987, plaintiff filed a letter which purported to be a more definite statement pursuant to the Court's Order. On April 21, 1987, The First National Bank of Morgantown, N.A., filed a Motion to Dismiss and on April 24, 1987, First Federal Savings & Loan Association of Greene County, Pennsylvania, filed a Motion to Dismiss. On May 13, 1987, the

Court heard oral argument on the said Motions to Dismiss, and a ruling on the matter was continued until further Order, and the defendants were required to submit to the Court flow-charts of all transactions involving the plaintiff as alleged in the letter complaint. On June 4, 1987, First Federal filed with the Court an Affidavit of Richard V. Morgan, its First Vice-president, setting forth all transactions between First Federal and the plaintiff, and on June 15, 1987, First National files its flow-chart, narrative report, and accompanying exhibits, all pursuant to the Court's prior request. On August 3, 1987, and again on September 2, 1987, the Court took testimony and heard argument from the parties with repect to the aforesaid Motions to Dismiss, and the Court believes that the said Motions should be treated as Motions for Summary Judgment.

Accordingly, the Court hereby makes the following findings of fact:

1. That Andrew Morris and Frances B. Morris (husband and wife), as Tenants by the Entireties, established Savings Account No. D500 on the 19th day of November, 1975, with the First Federal Savings and Loan Association of Greene County; and that the "Tenants By The Entirety Savings Account" for Account No. D-500 provided:

> "... it being understood and agreed that either of the undersigned who shall first act shall have the power to act in all matters relating to the membership, and this savings or investment account,

including but not limited to the withdrawal in whole or in part of this account, ...";

2. That on or about the 26th day of January, 1981, said account was in the amount of $10,000.00, together with accured interest of $54.31, as evidenced by Certificate No. 6404;

3. That during January, 1981, Andrew Morris executed a "Withdrawal Ticket" directing the First Federal Savings and Loan Association of Greene County to pay the balance of the Account No. D-500 in the amount of $10,000.00 to The First National Bank of Morgantown, N.A.; that, pursuant to said directions, First Federal Savings and Loan Association of Greene County closed said Account on the 26th day of January, 1981, and issued its Check No. 28669 in the amount of $10,000.00, payable to the order of The First National Bank of Morgantown, N.A., and its Check No. 28670, in the amount of $54.31, being accrued interest, payable to the order of the First National Bank of Morgantown, N.A., all as evidenced by copies of said documents attached and made a part of said affidavit.

4. That Frances B. Morris established Savings Account No. D694 on the 26th day of January, 1977, with the First Federal Savings and Loan Association of Greene County, in the amount of $10,000.00, and as of on or about the 29th day of January, 1981, there remained in said Account in the form of Certificate No. 6403, the principal sum of $10,000.00, plus accrued interest in the amount of $60.60; that on the 29th day of January, 1981, said Account No. D694 was closed upon the request of Frances B. Morris, as evidenced by a

"Withdrawal Ticket", signed by her; and the said principal sum of $10,000.00 was paid by First Federal Savings and Loan Association of Greene County to the First National Bank of Morgantown, N.A., by its Check No. 28827, dated the 29th day of January, 1981, and the accrued interest in the amount of $60.60 was also paid to The First National Bank of Morgantown, N.A., by Check No. 28828, dated the 29th day of January, 1981; all as directed, in writing by Frances B. Morris.

5. That Andrew Morris and Frances B. Morris, husband and wife, on the 23rd day of July, 1980, established the following designated accounts at First Federal Savings and Loan Association of Greene County, which were as of the 26th day of January, 1981, in the amounts as follows:

ACCOUNT NO.	AMOUNTS	INTEREST
a. MM-06-739	$22,944.51	18.20%
b. MM-06-740	$10,429.32	8.72%
c. MM-06-741	$10,429.32	8.72%
d. MM-06-742	$10,429.32	8.72%
	$54,232.47	

That on the 26th day of January, 1981, Andrew Morris executed "Withdrawal Tickets" directing the transfer of the above principal and interest to the First National Bank of Morgantown, N.A.; that by Check No. 28665 of First Federal Savings and Loan Association of Greene County, dated the

26th day of January, 1981, in the amount of $54,232.47, and Check No. 28666, dated the 26th day of January, 1981, in the amount of $43.01, said amount were paid to The First National Bank of Morgantown, N.A. "For Deposit to the Account of Andrew and Frances B. Morris"; that said checks were negotiated by The First National Bank of Morgantown, N.A..

6. That complete information relating to the aforesaid accounts and transactions was furnished to Edgar F. Heiskell, III, former Attorney for Frances B. Morris, and John C. Gill, Supervisory Analyst of the Federal Home Loan Bank and Board in Pittsburgh; and there has been similar and additional information provided to governmental agencies and police officials of local and State police.

7. On January 26, 1981, two check were received by First National in the total amount of $54,275.48. As a result of an existing Repurchase Agreement with a balance of $110,000.00 in the name of "Andy Morris #1," these two checks were deposited into that account, resulting in a new balance of $164,274.48 as of this date.

8. On January 28, 1981, First National received two more checks from First Federal payable to First National totaling $10,054.31, and in turn, this amount was credited to the existing Repurchase Agreement - "Andy Morris #1." This brought the balance to $174.329.79.

9. On February 6, 1981, two or more checks from First Federal were received by First National in the amount of

$10,060.00 and were deposited to the existing Repurchase Agreement - "Andy Morris #1." This brought the Repurchase Agreement total to $185,495.70, with accrued interest. In February 6, 1981, at the request of plaintiff's husband, Andy Morris, $10,000.00 was transferred to Andy Morris Home Centers Checking account, leaving a balance of $175,495.70.

10. On March 4, 1981, Robert Lloyd, Assistant Cashier at First National, wrote a letter to both Mr. and Mrs. Morris which confirmed a telephone conversation between them. As a result of the telephone conversation and subsequent confirming letter, on March 4, 1981, Repurchase Agreement "Andy Morris #1" was changed to Andy Morris or Frances B. Morris, the new balance as of March 4, 1981, including accrued interest was $177,544.56.

11. Additionally on March 4, 1981, this Repurchase Agreement was credited an additional $33,675.75 from "Andy Morris #2," which included interest of $1,220.31 plus $5,208.68 from Mr. and Mrs. Morris' savings passbook account. The ending balance in this Repurchase Agreement as of March 4, 1981, was $216,428.99.

12. On March 5, 1981, a second or new Repurchase Agreement for $123,000.00 was established at The First National Bank of Morgantown, N.A., in the name of Frances B. Morris. Funds for this second Repurchase Agreement were transfered from "Andy Morris or Frances B. Morris," leaving a balance of $93,428.99 in the original Repurchase Agreement.

13. The balance of the plaintiff's First National Bank Repurchase Agreement entitled "Frances B. Morris" grew to $185,875.27 on August 4, 1982, with interest and additions.

14. Then, on August 4, 1982, a new Repurchase Agreement for Mrs. Morris or her daughter, Deborah Herbert, was establised at First National for $185,875.27 and remained open until August 30, 1982. At that time, a First National check was issued to the Repurchase Agreement owners Mrs. Frances Morris or Deborah Herbert for the balance of $186,996.82, and was negotiated by the plaintiff.

15. In summary, First National's records reflect receipt of checks from First Federal Savings and Loan of Greene County, Pennsylvania, on three days totaling $74,389.79 ($54,275.48 + $10,054.31 + $10,060.00). Also, as shown above, these check were deposited into "Andy Morris #1" (Repurchase Agreement).

16. A review of the instructions First National received from First Federal indicates that the proceeds of the checks were to go to the credit of both Mr. and Mrs. Morris. Generally, bank policy would require the deposit of these checks to an account which both Mr. and Mrs. Morris had access, or require the endorsement of the individuals, because, when using the conjunctive word "and" it makes each individual a one-half owner.

17. However, while an error may have been made by First National when the checks were originally deposited, it was corrected on March 4, 1981, when the title to the Repurchase

Agreement was changed to both names. Further, as First National submitted that while the $73,389.79 in question was deposited to "Andy Morris #1" (later changed to Andy and Frances B. Morris), $123,000.00 was transferred out solely in the name of Frances B. Morris, plus residual of over $93,000.00 remained individually accessable by either Andrew or Frances Morris.

18. There are no facts supporting any claim by plaintiff regarding conspiracy, fraud, illegality of any sort, including embezzlement and forgery and plaintiff suffered no financial loss whatsoever as the result of the foregoing transactions.

WHEREFORE, the COURT HEREBY MAKE THE FOLLOWING ORDERS AND CONCLUSIONS OF LAW:

1. That, as a matter of law, there are no genuine issues of fact to be tried and that Defendants' Motions to Dismiss are hereby treated as Motions for Summary Judgment pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, as amended.

2. That the Defendants are entitled, as a matter of law, to Summary Judgment in their favor.

Accordingly, the Court hereby ORDERS that the Clerk of this Court enter the judgment in favor of the Defendants, together with costs expended.

Enter: May 27, 1988
LARRY V. STARCHER (SEAL)
LARRY V. STARCHER, JUDGE

ENTERED MAY 27,1988
CIVIL ORDER BOOK 59 PAGE 635
JEAN FRIEND, CLERK

APPENDIX III

COMPLAINT

February 9, 1987

Mrs. Frances B. Morris
37 Citadel Rd.
Morgantown, W.Va. 26505

Mrs. Jean Friend
Clerk of the Circuit Court
Office of the Clerk
The Circuit Court of Monongalia county
Morgantown, W.Va. 26505-5488

Mrs. Friend

Around January 21 through February 2, 1981, Money Market Certificates totaling approximately $90,000.00, plus other monies, was illegally missing from the First Federal Savings and Loan of Greene County, in Waynesburg, Pa.. I have received letters and documents from both First Federal Savings and Loan, and the First National Bank of Morgantown, W.Va., stating these funds were transferred to the First National Bank; however, the accounts into which the money was deposited are questionable, since the First National Bank has refused to give a full accounting of these funds and has refused to place the funds in the proper accounts. Therefore, I am alleging a possible conspiracy to defraud me of my money. I am issuing a formal complaint requesting to file a law suit against the said First National Bank to determine why and how this money was mishandled and to recover my money.

Sincerely,

Frances Morris

FILED FEB 10,1987
JEAN FRIEND
CIRCUIT CLERK

A TRUE COPY

ATTEST JEAN FRIEND (SEAL) CLERK
MONONGALIA COUNTY CIRCUIT COURT

APPENDIX IV

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

FRANCES B. MORRIS,
Plaintiff,

CIVIL ACTION NO. 87-C-98

v.

THE FIRST NATIONAL BANK OF MORGANTOWN, N.A., AND FIRST FEDERAL SAVINGS & LOAN OF GREENE COUNTY, PENNSYLVANIA,
Defendants.

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA,

1. That I, FRANCES B. MORRIS, being first duly sworn, do state that I have been a resident of Monongalia County, West Virginia, for many years and that I do depose and state as follows:

2. That I am the 60 year old mother of three children, was born poor as one of thirteen (13) children, have a eighth grade education and am the 45 percent owner of Morris Enterprises, Inc. with my husband Andrew Morris and considered myself and Andrew "well off" through a lifetime of hardwork and thrift before all the following transpired, and

3. That on Monday the 9th day of February, 1987, I went to the office of the Clerk of the Circuit Court of Monongalia County to see about filling a lawsuit because I felt the banks had stolen my money; and

4. That I wanted to fill out the forms needed to file my lawsuit because after going through 6 ot 7 Monongalia County attorneys, one in Florida and yet another in Washington County, Pennsylvania, and I could not get anyone to diligently represent me; and

5. That the personnel in the Clerk's Office advised me that I had to put my complaint in writing;

6. That I came back the next day with my letter to Mrs. Friend as I was told to do, and paid my money and filed my lawsuit; and

7. That I tried to present my case but failed owing to my having no knowledge of legal procedure; and

8. That we had several hearings, but Judge Starcher at no time advised that I needed a lawyer; and

9. That he never told me about my need for a Court Reporter and we never had a Court Reporter; and

10. That he told me only that I needed to respond in writing to the lawyers' motions and I did attempt to do so; and

11. That I was never told about Court procedural rules; and

12. That I was never told about the summary judgment procedure and how the motion to dismiss could become a summary judgment but, in fact, was told by Judge Starcher he would not grant the banks' motion to dismiss; and

13. That I was absolutely never told about filing an affidavit in response to their motion to dismiss; and

14. That I was only told at one hearing that that I had to be more definite as to my complaint and I tried to do that; and

15. That daughter-in-law Jimmye Morris who graduated from West Virginia University in accounting volunteered to examine the bank records for me and was willing to testify as to those records; and

16. That the Judge never allowed Jimmye to go to the bank and see the bank records; and

17. That both Jimmye Morris and my daughter Deborah Herbert attended the Court hearings with me as they could, but unfortunately neither knew the subtleties of legal procedure; and

18. That I thought I had a right to a jury trial at which time I could put on my evidence and exhibits or at the least the bank would return my money; and

19. That I want the chance to present my case to a jury and I now see that the blind faith which I had in the Judges and

Justice has been misplaced, possibly through my own ignorance of the legal system; and

20. That I believe many jury issues remain or were decided by Judge Starcher without hearing my evidence, particularly as to the forgery of my signature, the misrepresentations made to me as to the card I signed opening my account at First Federal, the location and authenticity of my husband's signature, or lack thereof, on the repurchase agreements and the statements made in the affidavits of the bank officials; and

21. That I believe the banks furnished false information to the Court and I was never given a chance to present my side of several questions; and

22. That I wrote Judge Starcher by letter dated June 25, 1987, by certified mail with return receipt receipt requested and copies by regular mail to the bank lawyers, Mr. Shuman and Mr. Oliver; and

23. That this letter apparently was never considered by the Court, was not even made a part of the Court file, and was only placed in the Court file in 1989 by my attorneys; and

24. That Mr. Morgan's affidavit is at variance with letters previously written me by him, and

25. That when Andy Morris and I opened the account in Wayensburg, Pennsylvania in the 70's I specifically asked whether the account would require both or our signatures

for change or withdrawal and was assured that both signatures were required to remove any money; and

26. That I was assured that both Andy and myself signing the card meant that both my signature and Andy's would be required and this mounted to fraud on the part of the Waynesburg bank; and

27. That First Federal claims to have sent money to First National Bank on my signature; as I did not sign anything to transfer any money this is a FORGERY, further, at the time of the transfer I was in Florida with my daughter Deborah Herbert and no one ever sent me anything to sign my name; and

28. That neither I nor my husband Andy Morris signed nor approved the repurchase agreements in March, 1981, as First National claims; and

29. That a very genuine issue of fact exists as to the various signatures authorizing transfer of funds and the legitimacy of several transfers without signature; and

30 That no record was ever taken on any hearings in this matter.

And further Affiant sayeth naught.

Frances B. Morris (SEAL)

Frances B. Morris, Affiant herein, did this 23rd day of January, 1989, read, sign and swear to and affirm the facts

stated in the foregoing Affidavit, before me, a Notary Public, in my said County and State.

Frances M. Cage (SEAL)
NOTARY PUBLIC

APPENDIX V

April 15, 1987

Frances B. Morris
37 Citadel Rd.
Morgantown, W.Va. 26505

Daniel A. Oliver, Esquire
Oliver and Yackel
162 Chancery Row
Morgantown, W.Va. 26505

Mr. Oliver,

Re: Civil Action no. 87c98

This letter is in compliance with your request for a more definite statement. Since the Circuit Court of Monongalia County, W.Va., does not have the required forms to file a law suit I am providing proper and true statements to help you better understand the issue. On August 5, 1982, I hired attorney Edgar F. Heiskell III to handle my case which was comprised of three different subjects:

1) to recover certificates and other monies missing from accounts of Andrew and Frances Morris

2) to look into a case which was mishandled in the Magistrate Court of Morgantown, W.Va., Monongalia County concerning an incident at Westover Flea Market

3) also, to get information concerning Morris Enterprises, P.O. Box 365, Osage, W.Va. 26543, a company owned by Andrew and Frances Morris.

Since attorney Edgar F. Heiskell, along with other attorney, have mishandled and failed to properly represent me, I wish to be my own representative.

In answer to you questions:

2A) Yes, I am making claim against The First Federal Savings and Loan Association of Green Co., and The First National Bank of Morgantown, W.Va., Monongalia County.

2C) This has not yet been determined, although many of the documents were given to the attorneys, the money has not yet been returned to my account.

2D) Mishandled means unlawful, against the law.

2E) Undertermined amount

2F) fully accounted for

2G) Undetermined

2H) I have given my fullest cooperation to all the attorneys and have supplied them with proof of forgery, misappropriation, and possible other charges, and the money has not yet been returned to my account.

Frances B. Morris(signature)

FILED Apr. 21 1987
Jean Friend (signature)
CIRCUIT CLERK

APPENDIX VI

Ginny L. McCoy
Official Court Reporter
17th Judicial Circuit Courthouse
Morgantown, West Virginia 26505

Registered Professional Reporter *(304) 291-7212*

January 12, 1989

Patricia A. Bunner
Attorney at Law
818 Monongahela Building
235 High Street
Morgantown, WV 26505

Re: Morris vs. First National Bank Civil Action No. 87-C-98

Dear Ms. Bunner:

I checked my steno notes for May 24, 1988 and found no record of a hearing on that date in the above referenced case.

Sincerely,

Ginny L. McCoy (signature)
Ginny L. McCoy

Ginny L. McCoy
Official Court Reporter
17th Judicial Circuit Courthouse
Morgantown, West Virginia 26505

Registered Professional Reporter *(304) 291-7212*

August 31, 1988

Patricia A. Bunner
Attorney at Law
818 Monongahela Building
235 High Street
Morgantown, WV 26505

Re: Morris vs. First National Bank Civil Action No. 87-C-98

Dear Ms. Bunner:

I have checked my records and found that I was not present at any of the following hearings in the above referenced case:

April 13, 1987

May 13, 1987

August 3, 1987

September 2, 1987

May 24, 1987.

If you would like me to check for any other hearing dates, please inform me.

Sincerely,

Ginny L. McCoy (signature)
Ginny L. McCoy